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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 CARPENTERS HEALTH AND SECURITY TRUST
10 OF WESTERN WASHINGTON; CARPENTERS
11 RETIREMENT TRUST OF WESTERN
12 WASHINGTON; CARPENTERS-EMPLOYERS
13 VACATION TRUST OF WESTERN
14 WASHINGTON; and CARPENTERS-
15 EMPLOYERS APPRENTICESHIP AND
16 TRAINING TRUST OF WESTERN
17 WASHINGTON,
18

Cause No. 17-cv-1645

COMPLAINT FOR MONETARY DAMAGES

Plaintiffs,

v.

16 BEST QUALITY SIDING, LLC, a Washington
17 limited liability company; and CARMEN
18 KUCINSKI, an individual,

Defendants.

19 I. **PARTIES**

20 1.1 Plaintiff Carpenters Health and Security Trust of Western Washington
21 ("Carpenters Health Trust") is a Taft-Hartley trust fund established to provide and
22 maintain hospital, medical, dental, vision, disability or death benefits and any other
23 similar benefits, or any combination thereof as the Trustees may determine in their
24 discretion for the benefit of the Employees and their beneficiaries. The Carpenters
25 Health Trust maintains its principal office in Seattle, King County, Washington.
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1 1.2 Plaintiff Carpenters Retirement Trust of Western Washington ("Carpenters
2 Retirement Trust") is a Taft-Hartley trust fund created to provide retirement and
3 associated death benefits for employees and their beneficiaries. The Carpenters
4 Retirement Trust maintains its principal office in Seattle, King County, Washington.

5 1.3 Plaintiff Carpenters-Employers Vacation Trust of Western Washington
6 ("Carpenters Vacation Trust") is a Taft-Hartley trust fund created to provide vacation
7 benefits for employees. The Carpenters Vacation Trust maintains its principal office in
8 Seattle, King County, Washington.

9 1.4 Plaintiff Carpenters of Western Washington Individual Account Pension
10 Trust ("Carpenters 401(k) Trust") is a Taft-Hartley trust fund created to provide
11 retirement and associated death benefits for participants and their beneficiaries. The
12 Carpenters 401(k) Trust maintains its principal office in Seattle, King County,
13 Washington.

14 1.5 Plaintiff Carpenters-Employers Apprenticeship and Training Trust Fund of
15 Western Washington ("Carpenters Apprenticeship Trust") is a Taft-Hartley trust fund
16 created to defray, in whole or in part, costs of apprenticeship or other training programs
17 for the education of apprentices and journeymen carpenters. The Carpenters
18 Apprenticeship Trust maintains its principal office in Seattle, King County, Washington.

19 1.6 The Plaintiffs are commonly referred to collectively as the Carpenters
20 Trusts of Western Washington (the "Carpenters Trusts").

21 1.7 Defendant Best Quality Siding, LLC ("BQS") is a Washington limited liability
22 company with its principal place of business in Redmond, King County, Washington.

23 1.8 Defendant Carmen Kucinski is an individual believed to be residing in
24 Redmond, King County, Washington. Ms. Kucinski is the governor and sole member of
25 BQS and is the company's registered agent.

II. JURISDICTION AND VENUE

2.1 This Court has exclusive jurisdiction pursuant to §502(e)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), codified at 29 U.S.C. §1132(e)(1).

2.2 Venue in this Court is proper pursuant to §502(e)(2) ERISA, codified at 29 U.S.C. §1132(e)(2), and pursuant to agreement between the parties.

III. FACTS

3.1 On March 20, 2017, Carmen Kucinski, identifying herself as the "Owner" of BQS, executed a Project Agreement on behalf of BQS with the Pacific Northwest Regional Council of Carpenters (the "Union"). The Project Agreement covers work performed by BQS on the Parkside Apartments located at 900 W Casino Road, Everett, Snohomish County, Washington 98208 (the "Parkside Project Agreement").

3.2 On April 17, 2017, Garrett Meador, identifying himself as "Administration" for BQS, executed a second Project Agreement on behalf of BQS with the Union. The second Project Agreement covers work performed by BQS on the Trailside Apartments located at 1300 100th Place SE, Everett, Snohomish County, Washington (the "Trailside Project Agreement").

3.3 Both Project Agreements incorporate by reference the terms and conditions of the *2015 – 2018 Agreement between Associated General Contractors of Washington and Carpenters, Piledrivers, and Millwrights of the Pacific Northwest Regional Council of Carpenters affiliate of the United Brotherhood of Carpenters and Joiners of America*, effective June 1, 2015 (the “Master Labor Agreement”):

1. DESIGNATED LABOR AGREEMENT: The employer adopts and agrees to abide by the following Labor Agreement:

Western & Central WA Master Labor Agreement Rep by:
AGC of Western WA Effective: 6/1/15 to 5/31/18.

1 3.4 By signing the Project Agreements, BQS agreed to make fringe benefit
 2 contributions to the Carpenters Trusts and be bound by the terms and conditions of
 3 their respective trust agreements:

4 6. TRUST FUND OBLIGATIONS: The undersigned Employer hereby
 5 becomes a party to the applicable Trust Agreements for the trust
 6 funds or their successors identified in the designated Labor
 7 Agreement. The Employer agrees to be bound by the written
 8 provisions and procedures of said Trust Agreements, and any
 9 present or future amendments, and so [sic] any successor Trust
 Agreements. Employer accepts as its lawful representatives, the
 employer trustees who are now or who may hereafter serve on the
 Board of Trustees of the respective Trusts as determined by the
 Trust Agreements.

10 3.5 Prompt payment of wages and fringe benefit contributions is an essential
 term of the Project Agreements.

12 3.6 The Carpenters Trusts are beneficiaries under the terms of the Project
 13 Agreements and the Master Labor Agreement.

14 3.7 By executing the Project Agreements, as discussed above, BQS agreed to
 15 the terms of the (i) Carpenters Health & Security Trust of Western Washington; (ii)
 16 Carpenters Retirement Trust of Western Washington; (iii) Carpenters-Employers
 17 Vacation Trust of Western Washington; (iv) Carpenters of Western Washington
 18 Individual Account Pension Trust; and (v) Carpenters-Employers Apprenticeship and
 19 Training Trust of Western Washington.

20 3.8 BQS's obligations under the Carpenters Health Trust are set forth in Article
 21 II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of the*
Carpenters Health and Security Trust of Western Washington, dated January 1, 1998, and
 23 as amended. Under the Carpenters Health Trust, BQS agreed to, among other things:

24 ▪ Submit its reports on or before the 15th day of the calendar month
 25 following the month in which the contributions are payable, even if
 the company had no employees for that period of time;

- 1 ▪ Comply with a request to submit any information, data, report or
2 other documents reasonably relevant to and suitable for purposes
3 of administration of the trust, as requested by the trust funds;
- 4 ▪ Payment of liquidated damages of twelve percent (12%) on all
5 delinquent contributions;
- 6 ▪ Payment of interest of not less than seven percent (7%), nor more
7 than eighteen percent (18%); and
- 8 ▪ Payment of the trust fund's attorney fees, costs of collection, and
9 auditor's fees.

10 3.9 BQS's obligations under the Carpenters Retirement Trust are set forth in
11 Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of the*
12 *Carpenters Retirement Trust of Western Washington*, dated January 1, 1998, and as
13 amended. Under the Carpenters Retirement Trust, BQS agreed to, among other things:

- 14 ▪ Submit its reports on or before the due date specified in the trust
15 agreement or as set by the trustees, even if the company had no
16 employees for that period of time;
- 17 ▪ Comply with a request to submit any information, data, report or
18 other documents reasonably relevant to and suitable for purposes
19 of administration of the trust, as requested by the trust funds;
- 20 ▪ Payment of liquidated damages of twelve percent (12%) on all
21 delinquent contributions;
- 22 ▪ Payment of interest of not less than seven percent (7%), nor more
23 than eighteen percent (18%); and
- 24 ▪ Payment of the trust fund's attorney fees, costs of collection, and
25 auditor's fees.

26 3.10 BQS's obligations under the Carpenters Vacation Trust are set forth in
27 Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of*
28 *Carpenters-Employers Vacation Trust of Western Washington*, dated January 1, 1998, and
29 as amended. Under the Carpenters Vacation Trust, BQS agreed to, among other things:

- 30 ▪ Submit its reports on or before the due date specified in the trust
31 agreement or as set by the trustees, even if the company had no
32 employees for that period of time;

- 1 ▪ Comply with a request to submit any information, data, report or
2 other documents reasonably relevant to and suitable for purposes
3 of administration of the trust, as requested by the trust funds;
- 4 ▪ Payment of liquidated damages of twelve percent (12%) on all
5 delinquent contributions;
- 6 ▪ Payment of interest of not less than seven percent (7%), nor more
7 than eighteen percent (18%); and
- 8 ▪ Payment of the trust fund's attorney fees, costs of collection, and
9 auditor's fees.

10 3.11 BQS's obligations under the Carpenters 401(k) Trust are set forth in Article
11 II, 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of Carpenters of*
12 *Western Washington Individual Account Pension Trust*, dated January 1, 1998, and as
13 amended. Under the Carpenters 401(k) Trust, BQS agreed to, among other things:

- 14 ▪ Submit its reports on or before the due date specified in the trust
15 agreement or as set by the trustees, even if the company had no
16 employees for that period of time;
- 17 ▪ Comply with a request to submit any information, data, report or
18 other documents reasonably relevant to and suitable for purposes
19 of administration of the trust, as requested by the trust funds;
- 20 ▪ Payment of liquidated damages of twelve percent (12%) on all
21 delinquent contributions;
- 22 ▪ Payment of interest of not less than seven percent (7%), nor more
23 than eighteen percent (18%); and
- 24 ▪ Payment of the trust fund's attorney fees, costs of collection, and
25 auditor's fees.

26 3.12 BQS's obligations under the Carpenters Apprenticeship Trust are set forth
in Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of*
Carpenters-Employers Apprenticeship and Training Trust Fund of Western Washington,
dated January 1, 1998, and as amended. Under the Carpenters Apprenticeship Trust,
BQS agreed to, among other things:

- Submit its reports on or before the due date specified in the trust agreement or as set by the trustees, even if the company had no employees for that period of time;
- Comply with a request to submit any information, data, report or other documents reasonably relevant to and suitable for purposes of administration of the trust, as requested by the trust funds;
- Payment of liquidated damages of twelve percent (12%) on all delinquent contributions;
- Payment of interest of not less than seven percent (7%), nor more than eighteen percent (18%); and
- Payment of the trust fund's attorney fees, costs of collection, and auditor's fees.

3.13 Upon information and belief, following execution of the Project Agreements, BQS used employees to perform work on each designated project subject to the terms of the Master Labor Agreement. BQS also began its monthly reporting and payment of fringe benefit contributions to the Carpenters Trusts.

3.14 BQS submitted its monthly contributions reports to the Carpenters Trusts. However, BQS did not provide full payment of its reported fringe benefit contributions.

3.15 As of the date of this complaint, BQS owes the Carpenters Trusts fringe benefit contributions for the period August 2017 in the amount of \$103,385.00, plus \$25,078.62 in liquidated damages for the period April 2017 – September 2017 and other ancillary charges including prejudgment interest, attorney fees, and costs of collection.

IV. CAUSES OF ACTION

First Cause of Action (Breach of Labor Agreement/Trust Agreement)

4.1 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 – 3.15, above.

4.2 BQS's failure to properly report and pay fringe benefit contributions constitutes breaches of the terms of the Project Agreements and the Master Labor

Agreement between the Union and BQS, to which the Carpenters Trusts are beneficiaries. BQS's failure to fully pay fringe benefit contributions it reported also constitutes breaches of the Trust Agreements, the terms of which BQS agreed to when it signed the Project Agreements.

4.3 As a result of BQS's breach, the Carpenters Trusts have been damaged in an amount to be proven at trial, but not less than \$103,385.00, plus liquidated damages and other ancillary charges including prejudgment interest, attorney fees, and costs of collection.

Second Cause of Action (Violation of ERISA)

4.4 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 – 3.15, above.

4.5 BQS's failure to report and pay fringe benefit contributions constitutes a violation of §503(a)(3), §515 ERISA, codified at 29 U.S.C. §1132(a)(3), §1145.

4.6 As a result of BQS's violation, the Carpenters Trusts have been damaged in an amount to be proven at trial, but not less than \$103,385.00, plus liquidated damages and other ancillary charges including prejudgment interest, attorney fees, and costs of collection.

Third Cause of Action (Breach of Fiduciary Duty)

4.7 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 – 3.15, above.

4.8 Defendant Kucinski is responsible for BQS's reporting and payment of fringe benefit contributions to the Carpenters Trusts.

1 4.9 Defendant Kucinski, for purposes of ERISA, is a fiduciary of trust fund
 2 assets, because she exerted control over employee deductions withheld for payment to
 3 the Carpenters Trusts.

4 4.10 Defendant Kucinski has failed to turn over trust fund assets, consisting of
 5 \$5,688.50 in employees' vacation pay and \$992.00 in employees' 401(k) contributions to
 6 the Carpenters Trusts, despite demand.

7 4.11 Defendant Kucinski's failure to remit trust fund assets is a breach of
 8 fiduciary duty under ERISA, and has damaged the Carpenters Trusts in an amount to be
 9 determined at trial, but not less than \$6,680.50.

10 **V. REQUESTED RELIEF**

11 The Carpenters Trusts respectfully request the Court grant the following:

- 12 A. Judgment in favor of the Carpenters Trusts against BQS, in an amount to
 be determined at trial, but not less than \$103,385.00, representing past-
 due and delinquent fringe benefit contributions owed by defendant
 pursuant to the terms of the labor and trust agreements to which BQS is a
 party;
- 16 B. Judgment in favor of the Carpenters Trusts against BQS, in an amount to
 be determined at trial, but not less than \$25,078.62, representing
 liquidated damages owed by defendant pursuant to the terms of the labor
 and trust agreements to which BQS is a party;
- 19 C. Judgment in favor of the Carpenters Trusts against BQS, in an amount to
 be determined at trial, representing accrued prejudgment interest owed by
 defendant pursuant to the terms of the labor and trust agreements to
 which BQS is a party;
- 22 D. Judgment against Carmen Kucinski individually, for joint and several
 liability with BQS for the \$5,688.50 in employees' vacation pay and \$992.00
 in employees' 401(k) contributions withheld from employee paychecks but
 not remitted to the Carpenters Trusts;

E. An award of attorney fees of not less than \$5,000.00, plus costs of collection, as authorized by the labor and trust agreements to which BQS is a party, and as authorized under ERISA; and

F. Any other such relief under federal law or as is just and equitable.

Dated: November 3, 2017.

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